

## **WHAT TO DO IF YOU'RE FIRED: THIRTEEN STEPS TO PROTECT YOUR LEGAL RIGHTS**

Being discharged from a job is always a painful experience, and particularly so when you suspect that the real reason for your termination has nothing to do with your performance or the legitimate needs of your employer. The pain is especially wrenching if you believe you have been singled out because of a personal characteristic you possess, such as your age, sex, race, sexual orientation, or disability, that has absolutely no correlation with your value as an employee. And the pain can be hardest when you have devoted many years of your life to your employer, or when your discharge is carried out in a particularly unfeeling way, or when your replacement is clearly less qualified than you.

Although it may be difficult to focus on legal issues at this time, it is crucial to begin taking action to protect your rights and maximize your chances for a successful lawsuit, settlement or severance agreement. Here are thirteen critical steps to take (or avoid) as soon as you learn of your termination.

1. **Don't sign anything without legal advice.** Your employer may offer you salary continuation, severance pay, or continuation of benefits in exchange for your signing papers in which you agree to give up your legal rights. Fight the temptation to sign whatever it takes to "get it over with." You may be able to obtain a significantly better bargain after obtaining legal advice.

2. **If at all possible, see a lawyer right away.** Very short deadlines apply to most claims for discrimination, so you should see a lawyer as soon as possible after you learn of your discharge. If you have any plans to sue or are considering it, you need to make sure what you say and do is consistent with your legal strategy. In addition, the decision whether or not to sue can best be made after speaking with a lawyer, who can evaluate the strength not only of your discrimination claim but also of other legal claims you may have against your employer (for example, breach of contract, illegal deprivation of employee benefits, wrongful interference with your employment relationship, violation of your pension rights, discharge in violation of public policy, etc.). If you do not know a lawyer who concentrates in employee cases, call the National Employment Lawyers Association (415) 397-6335.

Even if you do not think you want to sue, a lawyer can help you formulate a strategy for leveraging the best possible settlement from your employer.

3. **Formulate your goals.** Are you prepared to hold out for a large monetary award, which may take years of litigation? Or is it more important to you to obtain a settlement right away? Are there non-financial benefits you seek such as a favorable reference, or cleansing of your personnel file? It's important to determine exactly what your goals are before proceeding any further.

4. **Assemble your records.** In order to pursue your claims, you will need to put together a set of critical records and papers reflecting the history of your employment. Some of the more important records to gather include: all your past performance evaluations; your company's

personnel manual or employee handbook; your collective bargaining agreement, if you are a union member; booklets or other materials describing your pension plan and your rights under the plan; and copies of your applications for new jobs. Under Massachusetts law, you have a right upon written request to obtain copies (within five days) of all personnel records that your employer or ex-employer maintains concerning you. This right should be exercised.

5. ***Talk to other termination victims.*** Other employees who were discharged or pressured into resigning may have useful information to offer. Some may even be interested in jointly pursuing legal action with you, especially where a number of employees were injured by one corporate action (such as a layoff or reduction in force) or the improper acts of a particular manager (such as sexual harassment).

6. ***Seek unemployment compensation.*** Most discharged employees are entitled to collect unemployment benefits under state law at your local Massachusetts Department of Employment & Training (DET) office. Don't be embarrassed to apply; this is a benefit you've earned. Also, your employer must give DET a written response to your unemployment claim. This employer statement to DET may provide you or your lawyer useful information if you decide to pursue a legal claim.

7. ***File claims with governmental anti-discrimination agencies.*** Whether or not you have a lawyer, you can and should file a discrimination complaint with the federal and state agencies in charge of administering the anti-discrimination laws. You may file a complaint with these agencies without cost to you. The federal Equal Employment Opportunity Commission (EEOC), JFK Federal Building, Room 475, Boston, MA 02203, (617) 565-3200, investigates and attempts to conciliate claims of age, disability, race, sex, religion and national origin discrimination in employment, including sexual harassment. The Massachusetts Commission Against Discrimination (MCAD) (Boston Office: One Ashburton Place, Boston, MA 02108, (617) 727-3990 investigates the same types of claims as the EEOC, as well as claims of sexual orientation discrimination, in both employment and non-employment situations. Unlike the EEOC, the MCAD has the power to hold hearings and ultimately make decisions on discrimination cases. However, the process is subject to enormous delays, frequently even longer than the delays of a court suit.

8. ***File complaints, if warranted, with other governmental agencies.*** Many federal and state agencies have anti-discrimination or other mechanisms in place to secure the rights of discharged employees. Among state agencies, for example, the Massachusetts Office of the Attorney General enforces the following laws: (a) the non-payment of wages law (which requires employers to pay employees all accrued salary and vacation pay upon termination); and (b) the personnel records law (which requires employers to provide employees with copies of their personnel files and to permit employees to correct errors in the files).

Various federal agencies also enforce anti-discrimination laws against employers that receive federal financing, some but not all of which enforce laws against age discrimination. These include, for example, the Office for Civil Rights of the Department of Health and Human Services, which funds many state agencies, hospitals, and nursing homes; and the Office for

Civil Rights of the Department of Education, which provides funding for most schools, colleges, and universities.

9. **Send a demand letter, through a lawyer or on your own.** Often employers who are advised that a strong discrimination claim could be brought against them are willing to settle out of court. This is more likely to occur if a lawyer sends the letter, but even your own carefully-drafted letter may cause the company to consider settlement.
10. **Seek support services.** If you pursue legal action, or even if you don't, this period is likely to be very stressful for you. You may need the support of a member of the clergy, physician, psychologist, or marriage counselor. To seek such services does not indicate weakness; it may give you the strength you will need to achieve your goals.
11. **Look for a new job.** If you sue you may need to demonstrate that you pursued a new position in order to prove that your ex-employer, and not any lack of effort on your part, is responsible for your economic losses. Even if you anticipate that your search may not succeed, as is often the case with discharge victims, you should look anyway. However, you need not accept a job that is unreasonably inferior to your old job.
12. **Sue.** If you have a strong case, and if you are prepared for the stress, costs and delays of litigation, sue your employer for discrimination and any other legal claims you may have. In some cases, a lawsuit is your only change of achieving a just resolution.
13. **If you sue, win big.** Your greatest contribution to ending workplace discrimination could be a significant verdict or judgment in your favor - one that sends a clear, firm message to your employer and others that at this point in history, the rights of workers can be ignored only at an employer's peril.